

GARY L. PEARSON, D.V.M.  
1305 Business Loop East  
Jamestown, North Dakota 58401  
Telephone (701) 252-6036  
Facsimile (701) 251-6160  
Email: [geparson@daktel.com](mailto:geparson@daktel.com)

OFFICIAL FILE COPY RECEIVED		
APR 17 2006		
REPLY:	YES	NO
INFO. COPY TO:		
DATE	INITIAL	TO
4/18/06	(CDE)	Alicia
4/17/06	EN	Rich
4/17/06	EDM	RON
April 14, 2006		
CLASSIFICATION	WYR-4.03-	
PROJECT	GAR	
CONTROL NO.		
FOLDER I.D.		

Re: Comments regarding scoping of the Draft Environmental Impact Statement for the Northwest Area Water Supply Project

Northwest Area Water Supply Project EIS  
U. S. Bureau of Reclamation  
Dakotas Area Office  
P. O. Box 1017  
Bismarck, North Dakota 58502-1017

Dear Sir or Madam:

The Environmental Assessment (EA) prepared for the Bureau of Reclamation's Northwest Area Water Supply Project (NAWS) by Houston Engineering, Inc., American Engineering, P.C., Montgomery Watson, and Bluestem Incorporated in 2001 failed to comply with the requirements of the National Environmental Policy Act in three fundamental and important respects:

1. The Environmental Assessment failed to describe adequately the environmental impacts of the proposed action.
2. The Environmental Assessment failed to consider alternatives to the proposed action.
3. The Environmental Assessment was not prepared by the Bureau of Reclamation or in cooperation with unbiased, independent contractors.

In order to comply with the requirements of the National Environmental Policy Act, it will be necessary for the Bureau of Reclamation to address each of these deficiencies substantively and objectively in the Environmental Impact Statement (EIS) that now is being prepared for the project.

### Environmental Impacts of the Proposed Action

Section 102(2)(C) of the National Environmental Policy Act requires Federal agencies to prepare a "detailed statement" describing the environmental impacts of proposed actions significantly affecting the quality of the human environment, and the courts have confirmed that environmental impact statements are to be full disclosure documents.

The EIS must not only describe the environmental impacts that will occur in the immediate area of the project and the risk of impacts occurring in other areas, but it must provide a detailed discussion of the environmental impacts both in the local area and in other areas. Therefore,

instead of concluding that, because the risks of transfer of invasive species from the Missouri River Basin to the Hudson Bay basin under NAWS are determined to be low, the impacts of biota transfer need not be considered, the EIS must provide a detailed discussion of the environmental impacts of such low probability/high consequence events.

The EIS must also include a detailed analysis of the cumulative impacts of the NAWS project on the Missouri River in terms of current authorized and proposed or anticipated future withdrawals from the river under a full range of conditions, including the operation of Red River Valley Water Supply Project Missouri River supply alternatives during prolonged droughts in the Missouri and Red River basins.

### **Alternatives to the Proposed Action**

Section 102(2)(C)(iii) specifies that Environmental Impact Statements are to address "alternatives to the proposed action," and Council on Environmental Quality Regulations and the courts have made it clear that Federal agencies are not simply to consider alternatives for implementing the proposed action, but they are to explore all reasonable alternatives to the proposed action. For example, in *NRDC v. Morton*, the U. S. Court of Appeals for the District of Columbia stated:

"Congress contemplated that the impact statement would constitute the environmental source material for the information of the Congress as well as the Executive, in connection with the making of relevant decisions, and would be available to enhance enlightenment of and by the public. The impact statement provides the basis for (a) evaluation of the benefits of the proposed action in light of its environmental risks, and (b) comparison of the net balance for the proposed project with the environmental risks presented by alternative courses of action."

The EA for the NAWS project considered alternatives **FOR** supplying Missouri River water to eleven communities and five rural water systems in the Hudson Bay Basin of North Dakota, but it did not seriously consider alternatives **TO** supplying Missouri River water to those communities and rural water systems. The EA acknowledged that "sufficient groundwater supply is available in nearly every location of the NAWS area," but the only alternative other than using Missouri River water considered in the EA was to drill more wells for six communities and to construct 18 separate reverse osmosis systems, one for each of the 13 communities (except Parshall) and five rural water systems in the NAWS project area.

Certainly, construction of 18 individual reverse osmosis systems to serve communities as small as Columbus (pop. 223), Noonan (pop. 231) and Souris (pop. 97) would be among the least feasible groundwater alternatives that could be designed. Even so according to the EA, this alternative would cost only \$27 million more the preferred alternative utilizing an integrated Missouri River supply for the communities and rural water systems in located in the Hudson Bay Basin. However, neither the EA not the reports it cites considers alternative configurations utilizing integrated groundwater supplies that would reduce the number of wells and reverse osmosis systems needed.

For example, according to the EA, the projected 2010 combined 47,095 population of Minot and the Minot Air Force Base is 82 percent of the total combined population of the communities and rural water systems located in the Hudson Bay Basin to be supplied with Missouri River water under the NAWS project. Therefore, one obvious alternative would be to increase the supply from the Sindre Aquifer and the capacity of the Minot water treatment facility by 21 percent to provide water to the additional 10,114 people in the small communities and rural water systems in

the Hudson Bay Basin to be served by the NAWS project. Water could be distributed to those communities and rural water systems through the same 304 miles of distribution pipelines that would be used to deliver Missouri River water to them under the preferred alternative, and the cost savings from not building 45 miles of pipeline from the Missouri River and not building and operating the biota treatment plant could be used to expand the Minot water treatment facility. Of course, other alternatives utilizing integrated groundwater supplies also should be discussed and evaluated in the Environmental Impact Statement.

It should be noted in this context that the fact that Bureau violated NEPA by not adequately considering alternatives to the proposed action in its EA for the NAWS project may not be cited as an excuse for continuing to fail to evaluate alternatives to the proposed action in the Environmental Impact Statement. Consequently, the Bureau may not cite the fact that construction already is underway on the pipeline from the Missouri River to Minot to justify not considering alternatives **TO** the construction of a pipeline from the Missouri River to Minot.

Unfortunately, however, that is exactly what the Bureau is proposing to do in the Dakotas Area Office's *RECLAMATION Managing Water in the West, Northwest Area Water Supply Project* on "Environmental Impact Statement: Public Scoping," which states:

"Reclamation proposes to study and evaluate alternative **water treatment methods** to minimize the risk of transferring non-native biota **from the Missouri River Basin of the Hudson Bay Basin through the NAWS project.**" (Emphasis added)

Although the Bureau's decision to prepare an Environmental Impact Statement on the NAWS project is the result of a ruling by the U. S. District Court for the District of Columbia in a suit brought by the Province of Manitoba challenging the adequacy of the EA's discussion of impacts of the project in Canada and alternatives for minimizing those impacts, NEPA requires a full exploration of all reasonable alternatives, including alternatives **TO** delivering Missouri River water to the Hudson Bay Basin. Failure of the Environmental Impact Statement to address alternatives to the current NAWS project, including utilizing water supplies within the Hudson Bay Basin, objectively and substantively will render it inadequate under the National Environmental Policy Act and Council on Environmental Quality Regulations, and make it vulnerable to further litigation.

In order not to create additional bias against the full consideration of alternatives to the proposed action mandated by the National Environmental Policy Act, the Bureau should suspend all further construction on the NAWS project until full compliance with the Act has been achieved.

### **Eliminating Bias in the Preparation of the Environmental Impact Statement**

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act make it very clear that any Environmental Impact Statement:

"... prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency . . . It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency **to avoid conflict of interest.** Contractors shall execute a disclosure statement prepared by the lead agency . . . specifying that they have no **financial or other interest in the outcome of the project.**" (Emphasis added)

The EA for the NAWS project was prepared by private contractors for the North Dakota State Water Commission, the Garrison Diversion Conservancy District, and the Bureau of Reclamation. Both the North Dakota State Water Commission and the Garrison Diversion Conservancy District have mandates under North Dakota statutes to promote and pursue the diversion of water from the Missouri River into the Hudson Bay Basin of North Dakota. For example, North Dakota Century Code § 61-02-01.1 dealing with the State Water Commission directs that:

"The commission shall design the program to serve the long-term water resource needs of the state and its people and **to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.**" (Emphasis added)


Similarly, North Dakota Century Code § 61-24-01 establishing the Garrison Diversion Conservancy District declares the construction of the Garrison Diversion Unit to be a public necessity in order:

"To make available within the district, **waters diverted from the Missouri River** for irrigation, domestic, municipal, and industrial needs, and for hydroelectric power, recreation, fish, wildlife, and other beneficial and public purposes." (Emphasis added)

The EA was prepared for the State Water Commission, the Garrison Diversion Conservancy District and the Bureau by Houston Engineering, Inc., American Engineering P.C., Montgomery Watson and Bluestem Incorporated, all of which have long histories of contractual relationships with the North Dakota State Water Commission, the Garrison Diversion Conservancy District, and others with vested interests in Missouri River diversion and which, consequently, have clear financial interests in the outcome of the NAWS project.

In order to avoid these clear conflicts of interest and institutional and contractual biases in the Environmental Impact Statement for the NAWS project, the Bureau must (1) prepare the EIS itself, (2) exercise sole authority in selecting any contractors, and (3) assure that any contractors are free of historical or current financial or contractual relationships with the State Water Commission, the Garrison Diversion Conservancy District, or others with a vested interest in the NAWS project and/or Missouri River diversion.

Sincerely,

  
Gary L. Pearson, D.V.M.